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SUPREME COURT, U.S.

No. 07-728

IN THE SUPREME COURT OF THE UNITED STATES

CHARLOTTE SPADARO, Petitioner,

v.

CITY OF RIALTO, CALIFORNIA, Respondent.

On Petition for a Writ of Certiorari
to the Supreme Court of California

PETITION FOR REHEARING

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AT ISSUE

When the State alleges a criminal act, and the suspect has never been convicted, and the State pursues a civil action to hold the suspect liable for costs of restitution:

Is the reasonable belief of the officer enough to find the suspect liable?

TESTS

Proof beyond a reasonable doubt, by clear and convincing evidence, and by a preponderance of the evidence, are all accepted tests for a final verdict in American jurisprudence.

Probable cause, or the reasonable belief of the officer, are not acceptable tests for a final verdict. These are preliminary tests, for they are one-sided tests.

CONFLICTS

The California Court, in the opinion from which we appeal, has determined, "Procedural due process is satisfied" by a hearing as to the "reasonableness of the officer's belief" of a violation.

The California Court found that a hearing as to the "actual condition" at issue was unnecessary.

So, upon merely a hearing of the reasonableness of the officer's belief, with no hearing ever provided as to the actual condition at issue, Petitioner was found liable for the costs of restitution to the State. As such, Petitioner was provided a preliminary hearing, and was never provided a final hearing, and Petitioner was found liable upon a preliminary standard alone.

We contrast this with the decision of this Court in *United States v. One Assortment of 89 Firearms* 465 US 354 (1984), in which this Court described the burden of proof in civil actions which occur alongside criminal allegations as according to a "preponderance of the evidence".

This Court found in *One Lot Emerald Cut Stones and One Ring v. United States* 409 US 232 (1972) that while the criminal burden was proof beyond a reasonable doubt, the burden of proof in civil actions which occur alongside criminal allegations was according to an "adjudication on the preponderance-of-the-evidence".

This Court found in *Stone v. United States* 167 US 178 (1897):

> "... that the acquittal in the criminal case may have taken place because of the rule required to be proved beyond a reasonable doubt, and that, on the same evidence, on the question of preponderance of proof, there might be a verdict for the United States in the suit in rem".

This Court found in *Morrissey v. Brewer* 408 US 471 (1972) that the first hearing in such a case is:

> "to determine whether there is probable cause or reasonable grounds to believe" that a violation has occurred, and then "there must also be an opportunity for a hearing ... prior to the final decision" and this "hearing must be the basis for more than determining probable cause; it must lead to a final evaluation of any contested relevant facts and consideration of whether the facts as determined warrant" the deprivation.
>
> The individual "must have an opportunity to be heard and to show, if he can, that he did not violate the conditions..."
>
> The Court found that its task in this case was to outline the "minimum requirements of due process".

In the decision of *United States v. $93,685.61 in US Currency* 730 F2d 571 (1984), the Court discussed how probable cause is based upon reasonable grounds for belief, and held:

> "The burden of proof applicable to forfeiture proceedings ... requires that if the government succeeds in showing probable cause to institute forfeiture,

> the burden of proof shifts to the claimant to prove by a preponderance of the evidence" that deprivation was not indicated.

See also *United States v. Premises Known as 2639 Meetinghouse Road* 633 F Supp 979 (1986) and *Leyh v. Property Clerk of City of New York Police Dept.* 774 F Supp 742 (1991).

This Court found in *Cleveland Board of Education v. Laudermill et. al.* 470 US 532 (1985), that due process entails two levels of hearing, one as an "initial check ... a determination of whether there are reasonable grounds to believe the charges ... are true and support the proposed action" and a second, full hearing.

"We hold that if California makes ordinary judicial process available to respondent ... that process is due process" *Lujan v. G&G Fire Sprinklers, Inc.* 532 US 189 (2001).

This Court found in *United States v. James Daniel Good* 510 US 43 (1993):

> "The Government does not, and could not, dispute that the seizure ... deprived him of property interests protected by the Due Process Clause ...
>
> Here ... the seizure of property implicates two 'explicit textual sources of constitutional protection,' the Fourth Amendment and the Fifth ... The proper

question is not which Amendment controls but whether either Amendment is violated.

Nevertheless, the Government asserts that when property is seized for forfeiture, the Fourth Amendment provides the full measure of process due under the Fifth ... That reliance is misplaced.

[Fourth Amendment protections] are 'only the first stage of an elaborate system...'

Neither ... provides support for the proposition that the Fourth Amendment is the beginning and end of the constitutional inquiry whenever a seizure occurs. ... And it is at odds with our reliance on the Due Process Clause to analyze prejudgment seizure and sequestration of personal property.

...the purpose and effect of the Government's action in the present case go beyond the traditional meaning of search or seizure. Here the Government seized property not to preserve evidence of wrongdoing, but to assert ownership and control over the property itself. Our cases establish that government action of this consequence must comply with the Due Process Clauses of the Fifth and Fourteenth Amendments.

> Though the Fourth Amendment places limits on the Government's power to seize property for purposes of forfeiture, it does not provide the sole measure of constitutional protection that must be afforded property owners in forfeiture proceedings. So even assuming that the Fourth Amendment were satisfied in this case, it remains for us to determine whether the seizure complied with our well-settled jurisprudence under the Due Process Clause.
>
> The purpose ... is ... to minimize substantively unfair or mistaken deprivations of property ...
>
> Congress ... did not intend to deprive innocent owners of their property."

Concepts of reasonableness and probable cause are the domain of the Fourth Amendment. This Court found *in United States v. James Daniel Good*, supra, that the processes of the Fourth Amendment are only the first step when the government seeks to assert ownership over seized property, and that the due process clauses of the Fifth and Fourteenth Amendments also apply.

In the present case, the government indeed seeks to assert ownership over Petitioner's money. Petitioner's animals were seized and returned.

Petitioner's money, for the costs of seizure, was deprived with permanent intent.

The Fourth Amendment deals with seizure, or taking. The Fifth and Fourteenth Amendments deal with deprivation, or keeping.

The reasonable belief of the seizing officer is only the first test, and under *United States v. James Daniel Good*, supra, such tests of the Fourth Amendment are not enough to satisfy due process to permanently deprive someone of property, so due process requires something more than probable cause or reasonable belief.

Under *United States v. James Daniel Good*, supra, the innocence of the owner matters.

THE PRESENT CASE

The present case concerns California Penal Code section 597.1, which permits criminal prosecution for alleged failure to care for animals alongside a separate hearing process to determine the fate of the animals as well as who shall be liable for the costs of seizing the animals.

If the owner is held liable for the costs of seizure, this stands beyond any lien upon the animal, and is a personal debt to the State.

Holding one liable for these costs of seizure does not constitute in rem civil forfeiture, as discussed in *United States v. Ursery* 518 US 267

(1996), because the money to be paid for the costs of seizure is not the property as a legal fiction used in a crime. The costs assessed are for restitution, and they are calculated after any alleged incident, as a function of what the seizing agency determines to spend on the animals seized, for their boarding and care.

Whether the animals themselves would be the property as a legal fiction in an alleged crime is a separate issue. We submit that they would not be, for their existence does not further the alleged crime of a failure to care for them. This is not a dog bite case. In any case, neither the animals themselves nor their assessed value is at issue in this case. The animals were returned to Petitioner, but Petitioner was held liable by the administrative hearing officer for the costs of their seizure.

In determining who shall be liable for the costs of seizure, the administrative hearing officer conducted a hearing solely to determine if the seizing officer had a reasonable belief that he should seize Petitioner's animals, and did not consider objectively whether the animals were actually in need of seizure, or whether there was actually any violation of any law.

The California Court, in the opinion from which we appeal, found that this administrative hearing need only determine the reasonable belief of the seizing officer, rather than a hearing as to the "actual condition" of the animals or whether the seizure was actually necessary or whether there was any actual violation.

The administrative hearing officer never found that Petitioner violated any law, not by proof beyond a reasonable doubt, not by clear and convincing evidence, not by a preponderance of the evidence, not by any criminal or civil standard. The innocence of Petitioner remains whole under both criminal and civil standards.

The administrative hearing officer simply found that the seizing officer had a reasonable belief that seizure was necessary. Such a finding is merely a first step, and does not satisfy the process due.

The State provides Petitioner no further hearing process.

The ruling of the California Court in the present case is the precise equivalent of allowing the State to sue suspects who have not been found guilty, for the costs of their arrest, and imposing such costs at a preliminary hearing, upon a showing of probable cause alone.

The opinion of the California Court was written with a decided slant in favor of the incorrect testimony of the seizing agency, with whom Petitioner had already been involved in a dispute. The California Court cited California precedent by which the appeal Court could "view all factual matters in the light most favorable to the prevailing party, resolving all conflicts and indulging all reasonable inferences from the evidence to support the judgment."

The California Court opinion thus ignores the favorable testimony of four veterinarians in favor of Petitioner, with no veterinary testimony to contradict these four experts.

Indeed, the veterinarian the seizing agency itself hired to make its case against Petitioner instead testified favorably for Petitioner, stating that the condition of Petitioner's animals was "good", that they seemed to be in "good nutritional condition", that "their coats were clear, shiny", that they showed no signs of abuse or cruel treatment or malnutrition or deprivation of water (Record of the Case: Transcript of Proceedings, Vol. I, pages 33-34 and 59-60).

So, the facts cited in the California Court opinion are false and do not reflect a fair reading of the administrative record. And, by forming its opinion by indulging all reasonable inferences in favor of the prevailing party, the burden of proof at the appellate level was further prejudiced against Petitioner, and further deviated from the proper civil standards, denying Petitioner a fair process of appeal.

The California Court used this standard of review because they determined that a fundamental right of Petitioner was not at issue, in spite of the fact the Petitioner's money was at issue, and Petitioner has a fundamental property right to her money, under the Fourteenth Amendment to the United States Constitution.

In the present case, the State held Petitioner liable for $28,344.84, the costs of seizure and impoundment of all of the animals in Petitioner's kennel. Petitioner's animals were returned, upon the separate determination of the hearing officer that Petitioner could indeed care for them.

IMPACT

Petitioner first was provided only a preliminary test at hearing. Petitioner next was provided a biased appellate test. Both tests are substandard to the process due upon deprivation of property by the State.

The test of reasonable belief considers only the ex parte mindset of the seizing officer, ignoring any objective consideration of the facts at issue. This test is wholly insufficient to constitute a fair and full hearing. This is shortcut jurisprudence which provides that if an officer had a reasonable belief, that is the end of the debate, and if the officer's belief was wrong, so what?

This Court must not tolerate this injustice. This Court must stop this type of injustice before it further spreads. This case must be heard, because of the intrinsic importance of innocence, and of property rights, and of fundamental fairness, without which we have no occasion to consider any other principles of law.

The shortcut jurisprudence from which we appeal is so fundamentally shocking that to abide it

is to abide a crime not only against an individual but a crime against our system and our values and our nation.

Petitioner moves for this Court to vacate the order denying our Petition for Writ of Certiorari, entered on February 19, 2008, and moves for this Court to grant that Petition, on the grounds contained herein and on the grounds contained in that Petition.

(The California Court opinion and denial of review from which we appeal are exhibited with our Petition for Writ of Certiorari as Appendices A and B. The Penal Code section at issue is exhibited as Appendix C. The opinion of the administrative hearing officer can be found in the Record of the Case: Transcript of Proceedings, Vol. II, page 611).

DOES INNOCENCE MATTER?

The Chief Justice of this Court, John G. Roberts, Jr., wrote an article for the October 2, 1995, issue of the journal *Legal Times*, entitled, "Forfeitures: Does Innocence Matter?"

In that article, Mr. Roberts considered a case which was about to be heard by this Court, concerning a vehicle co-owned by a husband and wife, used by the husband to pick up a prostitute for sexual activity, and thus declared a nuisance vehicle by the State of Michigan and forfeited by the husband, but thus forfeited also by its co-owner, the innocent wife.

Mr. Roberts explored the question of whether the lack of complicity of the wife, at home and not picking up any prostitutes, mattered, such that she lost the value of her stake in the forfeited vehicle. Did her innocence matter?

Mr. Roberts wrote, "The question remains, however, what Mrs. Bennis was supposed to do here to protect her interest in the car: Remind Mr. Bennis not to use the car to pick up prostitutes, even though she had no knowledge that he planned to do so?"

In the case before this Court which resulted from that incident, *Bennis v. Michigan* 516 US 442 (1996), this Court found that such forfeitures and their results are "too firmly fixed in the punitive and remedial jurisprudence of the country to be now displaced". According to this Court, Mrs. Bennis' husband's guilt was enough, and Mrs. Bennis' innocence did not matter.

In the present case, the issue is slightly shifted. Petitioner is not the co-owner of a kennel where a crime was found to have occurred, subjecting the animals to forfeiture or subjecting the funds of the kennel owner to forfeiture in the amount of the costs of seizure of those animals.

Instead, in the present case, we deal with the forfeiture of such funds from Petitioner where no crime has ever been found to have occurred.

Four veterinarians provided testimony in favor of Petitioner, with no veterinary testimony to contradict these four experts. The administrative hearing officer found only that the seizing officer had

a reasonable belief, and did not find that there was any actual violation.

Petitioner's actions led not to any crime; there was merely the belief in one officer's mind that a crime might have occurred. Petitioner's actions led not to any adjudicated violation, by any criminal or civil standard, which would have legally permitted any forfeiture.

Under the scam of shortcut jurisprudence, where only the belief of the seizing officer is adjudicated, the mistaken officer could come back and seize Petitioner's animals over and over, and Petitioner would be liable to pay for the officer's mistake every time, with no actual violation ever adjudicated.

Under the scam of shortcut jurisprudence, Petitioner could do everything right and be perfectly innocent and still be liable over and over for the mistaken beliefs of a seizing officer.

The question remains, what was Petitioner supposed to do: Educate the seizing officer that her animals were well and in normal conditions, as affirmed by the four veterinarians offering supportive testimony, with no veterinary testimony to contradict them, even though Petitioner had no knowledge that the seizing officer planned to seize?

What was Petitioner supposed to do to avoid a mistaken belief in the mind of the seizing officer? What more could Petitioner do than be innocent?

What more can any innocent person do than be innocent?

How can America abide its innocent citizens paying the government for crimes that never happened?

In the case of Mrs. Bennis, at least someone had been found by some standard to have violated something.

Whereas Mrs. Bennis of Michigan suffered for the actual adjudicated crime of her husband, Petitioner suffers for no adjudicated crime, only for the adjudicated reasonable belief of a crime, the reasonable belief of a violation in the mind of one inexpert officer, merely a preliminary step in an incomplete adjudication.

We ask now Chief Justice Roberts and this Court, when property is subject to forfeiture, and no crime has actually been found by any standard: Does innocence matter?

If not in such a case, then does innocence ever matter?

Respectfully submitted,

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CERTIFICATE OF PETITIONER

Petitioner certifies that this Petition for Rehearing is based upon substantial grounds not previously presented, and is presented in good faith and not for purposes of delay.

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